MT LEGISLATIVE HISTORY

Chapter 789 1991

Bill H 559 S _____ Original bill & hist. ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 15	✓C	Hearing Date(s)	Mar 25	✓C
	Feb 17	✓C		Apr 03	✓C
		C			C
		C			C
Date Out	Feb 20	✓C		Apr 04	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Note; A Conference Committee was appointed, but its minutes were not recorded.

CHAPTER NUMBER 603 EFFECTIVE DATE: 4/24/91

HB 559 INTRODUCED BY FAGG, ET AL.
GENERALLY REVISE AND CLARIFY DUI LAWS
BY REQUEST OF DEPARTMENT OF JUSTICE

2/01	INTRODUCED		
2/01	REFERRED TO JUDICIARY		
2/02	FIRST READING		
2/15	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	2ND READING PASSED	93	4
2/26	3RD READING PASSED	98	1
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO JUDICIARY		
3/25	HEARING		
4/04	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/05	2ND READING CONCURRED	50	0
4/06	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS NOT CONCURRED	58	40
4/11	CONFERENCE COMMITTEE APPOINTED		
4/25	CONFERENCE COMMITTEE REPORT NO. 1		
4/25	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	75	21
4/25	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	74	24
	SENATE		
4/16	CONFERENCE COMMITTEE APPOINTED		
4/25	CONFERENCE COMMITTEE REPORT NO. 1		
4/29	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	28	14
4/29	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	38	10
	RETURNED TO HOUSE		
5/03	SIGNED BY SPEAKER		
5/03	SIGNED BY PRESIDENT		
5/03	TRANSMITTED TO GOVERNOR		
5/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 789	EFFECTIVE DATE: 10/01/91	

HB 560 INTRODUCED BY STANG, ET AL.
APPROPRIATE MOTORCYCLE ENDORSEMENT FEE TO MOTORCYCLE SAFETY TRAINING ACCOUNT

2/01	INTRODUCED		
2/01	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/02	FIRST READING		
2/02	FISCAL NOTE REQUESTED		
2/07	FISCAL NOTE RECEIVED		
2/08	FISCAL NOTE PRINTED		
2/14	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED		
3/07	2ND READING PASSED	88	9
3/07	TAKEN FROM ENGROSSING AND REREFERRED TO APPROPRIATIONS		
3/19	HEARING		
3/25	COMMITTEE REPORT—BILL PASSED		
3/27	2ND READING PASSED	82	15
3/28	3RD READING PASSED	84	15
	TRANSMITTED TO SENATE		

HOUSE BILL NO. 559

INTRODUCED BY FAGG, VAN VALKENBURG, O'KEEFE
BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE HOUSE

FEBRUARY 1, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 2, 1991	FIRST READING.
FEBRUARY 21, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 22, 1991	PRINTING REPORT.
FEBRUARY 23, 1991	SECOND READING, DO PASS.
FEBRUARY 25, 1991	ENGROSSING REPORT.
FEBRUARY 26, 1991	THIRD READING, PASSED. AYES, 98; NOES, 1.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 27, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
APRIL 4, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
APRIL 5, 1991	SECOND READING, CONCURRED IN.
APRIL 6, 1991	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 6, 1991	RECEIVED FROM SENATE.
APRIL 9, 1991	SECOND READING, AMENDMENTS NOT CONCURRED IN.

APRIL 11, 1991	ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
	IN THE SENATE
APRIL 16, 1991	ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
	IN THE HOUSE
APRIL 25, 1991	CONFERENCE COMMITTEE REPORTED.
	SECOND READING, CONFERENCE COMMITTEE REPORT ADOPTED.
	THIRD READING, CONFERENCE COMMITTEE REPORT ADOPTED.
	IN THE SENATE
APRIL 29, 1991	CONFERENCE COMMITTEE REPORT ADOPTED.
	IN THE HOUSE
APRIL 29, 1991	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

LC 0871/01

INTRODUCED BY House BILL NO. 559
Jay Van Valkenburg O'Kelly

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO OPERATING MOTOR VEHICLES, BOATS, AND AIRCRAFT WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AND AMENDING SECTIONS 23-2-523, 23-2-535, 45-5-205, 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-406, 61-8-714, 61-8-722, 61-8-805, 61-8-806, 61-11-101, AND 67-1-211, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-8-401, MCA, is amended to read:

"61-8-401. Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714 and 61-8-723 for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a ~~narcotic~~ dangerous drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination thereof, a person's ability to safely operate a motor vehicle has been diminished.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the ~~person's blood~~ person at the time alleged, as shown by ~~chemical~~ analysis of the person's blood, urine, or breath, ~~or other bodily substance~~, shall give rise to the following ~~presumptions~~ inferences:

(a) If there was at that time an alcohol concentration of 0.05 or less, it ~~shall~~ may be ~~presumed~~ inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not give rise to any ~~presumption~~ inference that the person was or was not under the influence of alcohol but such fact may

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be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it ~~shall~~ may be ~~presumed~~ inferred that the person was under the influence of alcohol. ~~Such presumption~~ The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of the two.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided.

(7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

Section 2. Section 61-8-402, MCA, is amended to read:

"61-8-402. ~~Chemical---blood~~ Blood, breath, or urine tests. (1) Any person who operates or is in actual physical control of a vehicle upon ways of this state open to the public shall be deemed to have given consent, subject to the provisions of 61-8-401, to a ~~chemical~~ test or tests of his

blood, breath, or urine for the purpose of determining ~~the alcoholic content of his blood~~ any measured amount or detected presence of alcohol, drugs, or a combination of the two in his body if arrested by a peace officer for driving or for being in actual physical control of a vehicle while under the influence of alcohol, drugs, or a combination of the two. The test or tests shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which ~~one of the aforesaid~~ test or tests shall be administered. A person may not be given more than two tests unless the person chooses to have a test as provided in 61-8-405(2).

(2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

(3) If a ~~resident~~ driver under arrest refuses upon the request of a peace officer to submit to a ~~chemical~~ test or tests designated by the arresting officer as provided in subsection (1) ~~of this section~~, none shall be given, but the officer shall, on behalf of the department, immediately

seize his driver's license. The peace officer shall forward the license to the department, along with a sworn report that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two, and that the person had refused to submit to the test or tests upon the request of the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (5).

(4) Upon seizure of a ~~resident~~ driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is valid for 72 hours after the time of issuance.

(5) The following suspension and revocation periods are applicable upon refusal to submit to a ~~chemical~~ test or tests:

(a) upon a first refusal, a suspension of 90 days with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

(6) ~~Like refusal by a~~ A nonresident driver's license seized under this section ~~shall~~ must be ~~subject to~~

~~suspension~~ sent by the department ~~in like manner, and the same temporary driving permit shall be issued to nonresidents~~ to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to a test.

(7) All such suspensions are subject to review as hereinafter provided."

Section 3. Section 61-8-403, MCA, is amended to read:

"61-8-403. Right of appeal to court. The department shall immediately notify any person whose license or privilege to drive has been suspended or revoked, as hereinbefore authorized, in writing and such person shall have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county wherein such person resides or in the district court in the county in which this arrest was made. Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon 10 days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon ways of this state open

to the public, while under the influence of alcohol, drugs, or a combination of the two, whether the person was placed under arrest, and whether such person refused to submit to the test or tests. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided."

Section 4. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible -- conditions of admissibility. (1) Upon the trial of any criminal action or other proceeding arising out of acts alleged to have been committed by any person in violation of 61-8-401 or 61-8-406:

(a) evidence of the any measured amount or detected presence of amount of alcohol, drugs, or a combination of the two in the person's blood person at the time of the act alleged, as shown by a chemical an analysis of his blood, breath, or urine, is admissible; and

(b) a report of the facts and results of any chemical test or tests of a person's blood, breath, or urine administered under 61-8-402 is admissible in evidence if:

(i) the breath analysis report test was prepared and verified performed by the a person who performed the test certified by the forensic sciences division of the department to administer breath tests or the blood or urine test was a laboratory analysis and the analysis was done in

a laboratory operated by the department of justice or by any other laboratory or facility certified or exempt from certification under the rules of the department; and

(ii) the report was prepared in accordance with any applicable rules of the department; and

(iii) if the test was on a blood sample, the person withdrawing the blood must have been was competent to do so under 61-8-405(1).

(2) If the person under arrest refused to submit to the test or tests as hereinabove provided in this section, proof of refusal shall be is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two."

Section 5. Section 61-8-405, MCA, is amended to read:

"61-8-405. Administration of tests. (1) Only a physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse acting at the request of a peace officer

may withdraw blood for the purpose of determining ~~alcoholic content~~ any measured amount or detected presence of alcohol, drugs, or a combination of the two in the person. This limitation does not apply to the taking of breath or urine specimens.

(2) The person ~~tested~~ under arrest may, at his own expense, have a physician or registered nurse of his own choosing administer a test, in addition to any administered at the direction of a peace officer, for the purpose of determining ~~the amount of alcohol in his blood~~ any measured amount or detected presence of alcohol, drugs, or a combination of the two in the person at the time alleged, as shown by ~~chemical~~ analysis of his blood, breath, or urine. The failure or inability to obtain an additional test by a person does not preclude the admissibility in evidence of the test or tests taken at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning the test or tests taken at the direction of the peace officer must be made available to him or his attorney.

(4) No physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse shall incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer such a

test.

(5) If ~~the~~ a test given under 61-8-402 or 61-8-806 is a ~~chemical~~ test of urine, the person tested must be given such privacy in the taking of the urine specimen as will ~~insure~~ ensure the ~~accuracy~~ integrity of the specimen and, at the same time, maintain the dignity of the individual involved.

(6) The department ~~of justice~~ in cooperation with any appropriate agency shall adopt uniform rules for the giving of ~~blood-alcohol~~ tests and may require certification of training to administer the tests as considered necessary."

Section 6. Section 61-8-406, MCA, is amended to read:

"61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more. It is unlawful and punishable as provided in 61-8-722 and 61-8-723 for any person to drive or be in actual physical control of a vehicle upon the ways of this state open to the public while the person's alcohol concentration ~~in his~~, as shown by analysis of the person's blood, breath, or urine, is 0.10 or more. Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

Section 7. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under the influence of alcohol or drugs. (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60

days and shall be punished by a fine of not less than $100 or more than $500. The jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(2) On a second conviction, he shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(3) On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year, and by a fine of not less than $500 or more than $1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) In addition to the punishment provided in this

section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both. On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which must include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure. As long as the alcohol information course and treatment program are approved as provided in this subsection, the defendant may attend the information course and treatment program of his choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to his alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency

counselor.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of ~~this section~~ sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder, then all records and data relating to the prior conviction are confidential criminal justice information as defined in 44-5-103 and public access to the information may only be obtained by district court order upon good cause shown.

(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401."

Section 8. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive blood alcohol concentration. (1) A person convicted of a violation

of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) On a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) On a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d) relating to revocation and suspension of driver's licenses shall apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant

fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of ~~this--section~~ sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder, then such prior offense shall be expunged from the defendant's record."

Section 9. Section 61-8-805, MCA, is amended to read:

"61-8-805. Suspension for operating a commercial vehicle with ~~a~~ blood alcohol concentration of 0.04 or more -- hearing. (1) A person whose blood alcohol concentration is 0.04 or more while he drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of his commercial vehicle operator's endorsement. If the department receives a sworn report from a peace officer that the person was operating a commercial motor

vehicle while his blood alcohol concentration was 0.04 or more, the department shall suspend the driver's commercial vehicle operator's endorsement:

(a) for 1 year, with no provision for a restricted probationary license or endorsement, upon receipt of the first report, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension must be for 3 years; and

(b) for 10 years, with no provision for a restricted probationary license or endorsement, upon receipt of a second or subsequent report at any time as determined from the records of the department.

(2) A peace officer who determines that a commercial motor vehicle operator's blood alcohol concentration is 0.04 or more shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that any person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against any charge of violating the provisions of subsection (1).

(4) The department shall immediately notify in writing any person whose commercial vehicle operator's endorsement is suspended under this section. The person suspended has the right to file a petition within 30 days after the notice

is given for a hearing in the matter in the district court in the county in which the finding of blood alcohol concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days' written notice to the county attorney of the county in which the appeal is filed. The county attorney shall represent the state. The court shall take testimony and examine the facts of the case, except that the issue is limited to whether the person was driving or had actual physical control of a commercial motor vehicle while his blood alcohol concentration was 0.04 or more. The court shall determine whether the petitioner is entitled to a commercial vehicle operator's endorsement or is subject to suspension as provided in this section. The provisions of 61-8-404 apply to any proceedings under this section."

Section 10. Section 61-8-806, MCA, is amended to read:

"61-8-806. ~~Chemical-blood~~ Blood, breath, or urine tests of commercial vehicle operators -- procedure -- suspension. (1) A person who operates a commercial motor vehicle upon the ways of this state open to the public is considered to have given consent, subject to the provisions of 61-8-401 and 61-8-805, to a ~~chemical~~ test of his blood, breath, or urine for the purpose of determining ~~the alcohol content of his blood~~ any measured amount of alcohol in his body if he is requested to submit to the test by a peace officer having

reasonable grounds to believe the person to have been driving or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public while his blood alcohol concentration was 0.04 or more. The peace officer may designate a blood, breath, or urine test to be administered.

(2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have withdrawn the consent provided in subsection (1).

(3) If a commercial motor vehicle operator who is a resident of Montana refuses upon the request of a peace officer to submit to a ~~chemical~~ test designated by the officer as provided in subsection (1), the test may not be given. On behalf of the department, the officer shall immediately seize the person's driver's license showing the commercial vehicle operator's endorsement and forward the license to the department, along with a sworn report that he had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while having ~~a blood~~ an alcohol concentration of 0.04 or more and that the person had refused to submit to the test upon the request of the officer. Upon receipt of the report, the department shall suspend the license for a period provided in subsection (5).

(4) Upon seizure of a resident's driver's license showing a commercial vehicle operator's endorsement, the peace officer shall issue, on behalf of the department, a temporary driving permit without the commercial vehicle operator's endorsement. The temporary driving permit is valid for 72 hours after issuance.

(5) If a commercial motor vehicle operator refuses to submit to a ~~chemical~~ test as provided in subsection (3), the department shall suspend his commercial vehicle operator's endorsement:

(a) upon first refusal, for 1 year, with no provision for a restricted probationary license or endorsement, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension for a first refusal must be for 3 years;

(b) upon a second or subsequent refusal at any time as determined from the records of the department, for 10 years, with no provision for a restricted probationary license or endorsement.

(6) A nonresident commercial motor vehicle operator who refuses to submit to a ~~chemical~~ test as provided in subsection (3) is subject to suspension by the department as provided in subsection (5) and ~~may-receive~~ must be given a temporary driving permit as provided in subsection (4)."

Section 11. Section 61-11-101, MCA, is amended to read:

"61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender of licenses. (1) Whenever any person is convicted of any offense for which chapter 5 makes mandatory the suspension or revocation of the driver's license of the person by the department, the court in which such conviction is had shall require the surrender to it of all driver's licenses then held by the person so convicted. The court shall thereupon, within 5 days, forward the license to the department and at the same time forward a record of such conviction to the department, providing that if such person does not possess a driver's license the court shall so indicate in its report to the department.

(2) Every court having jurisdiction over offenses committed under any act of this state or municipal ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days, to the department a record of the conviction or forfeiture of bail, not vacated, of any person in the court for a violation of any such laws, other than regulations governing standing or parking, and may recommend the suspension of the driver's license of the person so convicted. The court may also recommend that the department issue a restricted probationary license ~~in--lieu-of-the suspension-required-in-61-5-208(2)~~ on the condition that the individual comply with the requirement that he attend and

complete ~~a driver improvement school or~~ an alcohol ~~treatment program if one is available~~ information course as provided in 61-8-714 and 61-8-722. The department shall issue a restricted probationary license unless the person otherwise is not entitled to a Montana driver's license. Upon issuance of a probationary license, the licensee is subject to the restrictions set forth thereon and may not operate a vehicle in violation of those restrictions.

(3) Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report any such action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department."

Section 12. Section 23-2-523, MCA, is amended to read:

"**23-2-523. Prohibited operation and mooring -- enforcement.** (1) No person may operate or knowingly permit any person to operate any motorboat or vessel or manipulate any water skis, surfboard, or similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(2) No person may operate any motorboat, including a sailboat propelled by a motor of any kind, or manipulate any water skis, surfboard, or similar device attached to a motorboat while under the influence of alcohol, or drugs, or

a combination of the two.

(3) It is unlawful for the owner of any motorboat or vessel or any person having such in charge or in control to authorize or knowingly permit the same to be operated by any person who by reason of physical or mental disability is incapable of operating such watercraft under the prevailing circumstances.

(4) No person may operate or knowingly permit any person to operate any motorboat or vessel at a rate of speed greater than will permit such person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. However, nothing in this part is intended to prevent the operator of a vessel actually competing in a regatta which is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) No person may make a reckless approach to, departure from, or passage by a dock, ramp, diving board, or float.

(6) Skiers being pulled by motorboats must have on their person a life preserver, buoyant vest, or ski belt.

(7) No person may moor a vessel to any of the buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States, or the department or in any manner hang on with a vessel to such

buoy or beacon, except in the act of maintenance work on such buoy or beacon, nor may any person deface, remove, or destroy any such buoy, beacon, or other authorized navigational marker maintained in the waters of this state.

(8) If an officer whose duty it is to enforce the sections of this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in his judgment such use creates an especially hazardous condition, he may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring or launching site and to remain there until the situation creating the hazard is corrected or ended."

Section 13. Section 23-2-535, MCA, is amended to read:

"23-2-535. ~~Blood----alcohol~~ Alcohol concentration standards -- drug detection -- evidence admissible -- administration of tests. (1) The ~~presumptions~~ inferences contained in 61-8-401~~(3)~~(4) apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of ~~the~~ any measured amount or detected presence of alcohol, drugs, or a combination of the two in a ~~person's--blood~~ person at the time of the act alleged, as

shown by analysis of the person's blood, breath, or urine, and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a ~~chemical~~ test or tests of his blood, breath, or urine for the purpose of determining ~~the alcoholic--content--of--his--blood~~ any measured amount or detected presence of alcohol, drugs, or a combination of the two, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-405 and the definition of ~~blood~~ alcohol concentration provided in 61-8-407 apply to any testing done to ~~determine-the-blood-alcohol--concentration--of~~ a person charged with violation of 23-2-523(2).

(5) As used in 23-2-523(2), the term "under the influence" shall have the meaning provided in 61-8-401(3)."

Section 14. Section 45-5-205, MCA, is amended to read:

"45-5-205. Negligent vehicular assault -- penalty. (1) If a person operates a motor vehicle in a negligent manner

and he is driving while under the influence of alcohol, ~~or drugs~~ a dangerous drug, any other drug, or any combination of the three, as provided for in 61-8-401(1), and his conduct is the cause of bodily injury to another, he commits the offense of negligent vehicular assault.

(2) A person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed $1,000 or imprisoned in the county jail for a term not to exceed 1 year, or both."

Section 15. Section 67-1-211, MCA, is amended to read:

"67-1-211. ~~Blood alcohol~~ Alcohol conce tration standards -- evidence admissible -- administration of tests. (1) If a person acting or attempting to act as a crewmember of an aircraft has ~~a blood~~ an alcohol concentration of 0.04% by weight or more as defined in 61-8-407, it may be inferred that the person is ~~conclusively presumed to be~~ under the influence of alcohol ~~or drugs~~ and is in violation of 67-1-204.

(2) Evidence of ~~the~~ any measured amount or detected presence of alcohol, drugs, or a combination of the two in ~~a person's blood~~ the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal

action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a ~~chemical~~ test or tests of his blood, breath, or urine for the purpose of determining ~~the~~ any measured amount or detected presence of alcohol, ~~or drug content of his blood~~ drugs, or a combination of the two in his body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, ~~or~~ drugs, or a combination of the two. The test or tests must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, ~~or~~ drugs, or a combination of the two. The arresting officer may designate which ~~one~~ of the aforesaid tests must be administered. A person who is unconscious or who is otherwise in a condition rendering him incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with violation of 67-1-204 refuses to submit to a ~~chemical~~ test or tests of his blood, breath, or urine for the purpose of determining ~~the alcohol content of~~ any measured amount or detected presence of alcohol, drugs, or any combination of the two in his ~~blood~~ body, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in 61-8-405 and the definition of alcohol concentration provided in 61-8-407 apply to any testing done to determine any measured amount or detected presence of alcohol, drugs, or a combination of the two in a person and the ~~blood~~ alcohol concentration of a person charged with violation of 67-1-204."

-End-

CHAIRMAN--BILL STRIZICH
NORMAL SCHEDULE==> SITE: ROOM 312-2 DAYS: M,T,W,T,F TIME: 8:00 A.M.

SECRETARY-JEANNE DOMME

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT-
HB0505	1/31	2/06		TABLED ON 02/15		
COBB, JOHN			ESTABLISHING BURDEN OF PROOF IN INTENTIONAL INTERFERENCE OF CONTRACTS			
HB0546	2/01	2/14		TABLED ON 02/14		
LARSON, DON			ALLOWING VICTIMS OF FELONY OFFENSES TO MAKE SENTENCING RECOMMENDATIONS			
HB0554	2/01	2/13		TABLED ON 02/13		
BENEDICT, STEVE			REVISE INDIGENT COURT FILING			
HB0555	2/01	2/15		DO PASS		2/19
HOFFMAN, DAVID			REVISE CRIMINAL PROOF AND PRESUMPTIONS			
HB0559	2/01	2/15		PASS AS AMENDED		2/21
FAGG, RUSSELL			GENERALLY REVISE & CLARIFY DUI LAWS			
HB0567	2/02	2/15		PASS AS AMENDED		2/19
FAGG, RUSSELL			REVISE ATTORNEY GENERAL DUTIES			
HB0581	2/04	2/18		DO PASS		2/19
STRIZICH, BILL			ALLOW ALL LAW ENFORCEMENT AGENCIES TO USE CERTAIN RECORDS OF YOUTHS			
HB0584	2/04	2/21		TABLED ON 02/22		
SOUTHWORTH, JIM			LIMIT DEFENSE ATTORNEY FEES IN WORKERS' COMPENSATION CASES			
HB0608	2/05	2/12		PASS AS AMENDED		2/16
WHALEN, TIM			GIVE PSC QUASI-JUDICIAL POWER INCREASE FINE FOR COMMON CARRIER TO $500 A DAY			
HB0610	2/05	2/11		PASS AS AMENDED		2/13
BRADLEY, DOROTHY			CLARIFY ALTERNATIVE REGULATION OF TELEPHONE LOCAL EXCHANGE COMPANIES			
HB0618	2/05	2/20		DO PASS		2/20
BERGSAGEL, ERNEST			REVISE CRIMINAL APPEAL TO DISTRICT COURT			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 15, 1991, at 7:10 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 505

Discussion: Chairman Strizich asked Greg Petesch to explain this bill to the committee and the bills relating to it.

Greg Petesch stated the Legislative Council, in 1980, adopted a rule that directed the staff to flag what the court found to be void or problems in the law or errors and problems people pointed out when discussing these things with staff that could be fixed

it is unnecessary.

Proponents' Testimony:

Judy Browning, Deputy of the Attorney General, stated she is representing the Department of Justice. The Department didn't have a problem with the statutes that set forth the responsibilities of the Attorney General except during last year the legislature audited the Attorney General's Office. Going through the statutes that set forth the duties, the auditor suggested that we clean up the language because some of these provisions have not been in operation for a long time. It was necessary to delete a lot of the excess language so we could reflect this back to the legislation.

The National Association of Attorney Generals have done a survey of all Attorney Generals and the legal provisions that set forth their responsibilities. The first page of the bill takes out line 17 through 19 which is now going to our states legal business department. On page 2 there is a lot of language taken out which is simply annotated language. On page 3 there is language that is cleaned up and on page 4 there are 3 sections taken out. There is some new language on the first page of the bill that says the Attorney General may bring cases in which the state has interest. That is a reflection of case law. I urge you to approve this bill and give it a do pass.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor:

REP. FAGG stated this bill simply modernizes the duties of the Attorney General's office and I would appreciate your support.

HEARING ON HB 559
GENERALLY REVISE AND CLARIFY DUI LAWS

Presentation and Opening Statement by Sponsor:

REP. FAGG, HOUSE DISTRICT 89, stated he is sponsoring this bill at the request of the Department of Justice. This bill was drafted to address certain inconsistencies in the language of Montana DUI laws. It has received the responses of numerous criminal lawyers both from the prosecution and defense side. It will conform the DUI laws to changes which have been made in the law by the Montana Supreme Court. The most significant change in this law changes presumptions to inferences. This is required under State vs. Weber that came out this past year. Previously law said that if a persons BAC was over .1 it was presumed they

were under the influence of alcohol and this presumption was rebuttable. The Montana Supreme Court held that it was unconstitutional and so this says there is an inference that a person was under the influence of alcohol. This is done strictly to conform with the Montana Supreme Court opinion. The most controversial part of the bill is the authorization for drug testing under the implied consent law. This law simply says it is okay for the police if they suspect a person is under the influence of drugs, to test for drugs. It also says there is a maximum of two tests that be given to a person who has been picked up for driving under the influence of drugs or alcohol. It also includes the DUI laws regarding the operation of boats and airplanes. That was not in the original bill drafted by the Department of Justice but was added in by the Legislative Council.

Proponents' Testimony:

Peter Funk, Assistant Attorney General, Department of Justice, stated this bill is brought here for three reasons. Inconsistencies that we perceive within the current DUI statutes, recommendations that we have received from criminal justice agencies throughout the state, and recent Montana Supreme Court decisions dealing with the issues of presumptions vs. inferences. There are certain provisions in the bill that might be construed to be emphasizing the law enforcement aspect of the DUI prosecution process. I think the most significant thing in the bill is the change from presumptions to inferences. That is certainly an amendment to the existing statute which can only be characterized as an effort that will come down on the side of the defendant. We don't put this bill forward in an attempt to enhance punishment or increase penalties for DUI, but to make the statues consistent.

On page one of the bill there is a change with the insertion of dangerous drug for narcotic purpose. The purpose of that change is simply to bring the language of the DUI statutes into conformity with the language of the criminal code. On page 2, line 15, there are some changes to the concentration of alcohol in a person's blood to the concentration of alcohol in the person. As you can see from that definition, the statutory definition did not refer to blood alcohol concentration but to alcohol concentration in general which is obtained by analysis of either the person's blood or urine. That is the point on page 2 in change the language from BAC to AC in the person.

On the bottom of page 2 and top of page 3 is a primary change. That is the shift from presumption to inference under the statutory provisions. The problem with using a presumption, in criminal prosecutions, is that a statutory presumption is something that is mandated for the jury. Under the existing statute, if a person has a BAC of .10 or more is it essentially out of the jury's hands as to what conclusion they reach on the

issue of whether a person was under the influence. The statutory language concerning presumption says if you have a BAC the jury must make the following findings. In two Supreme Court Cases in the last two years, we have variegated decisions concerning the use of presumptions to prove eliminate of criminal defense. The basic problem is the state has the obligation, in all criminal prosecutions, to prove every element in criminal defense beyond a reasonable doubt. When using presumption to do that, the state technically is not proving that issue beyond a reasonable doubt.

Because we are proposing a drug test under the complied consent test, we have to change the standard that is now built into the statute. Most individuals that are placed under arrest for a DUI offense are going to be put on a instrument that measures blood alcohol concentration. If, at that point, there is no indication of a high blood alcohol level, and the arresting officer still has the evidence to him for cause of arrest as far as a person being under the influence of something. The multiple testing built in the complied consent statute is a mechanism for law enforcement to deal with that problem. Then they administer a separate test which is going to have to be a blood test so they can determine what they are under the influence of, if not alcohol. That is the point of multiple testing.

John Conner, Montana County Attorney's Association, stated the association believes that this is good legislation because it clarifies the ambiguities in the law in respect to DUI prosecutions and it does benefit the defense for the same reasons. We are particularly interested in changing the laws relative to mandatory permissive inferences because all too often prosecutors rob their instructions from the language of the statute itself, which is not necessarily appropriate. The DUI statutes need to be changed to comport with existing case law so mistakes are not made by prosecutors in terms of presenting appropriate arguments or offering appropriate legal instructions. We urge your do pass consideration.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor:

REP. FAGG stated the Department of Justice is not trying to swing anything by you here. Peter Funk will be here for executive session and if you think there is something you have any questions about, please include him in your deliberations. I do believe this is an important bill to clear up some inconsistencies in the law. I urge your do pass.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 2-15-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. DAVE BROWN	✓		
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		
REP. BUDD GOULD	✓		
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER	✓		
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	✓		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN	✓		
REP. DIANA WYATT	✓		
REP. BILL STRIZICH, CHAIRMAN	✓		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 17, 1991, at 4:00 P.M.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Members Excused: Rep. Gould

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 555

Motion: **REP. STICKNEY MOVED HB 555 MOVED DO PASS.** Motion carried.

EXECUTIVE ACTION ON HB 567

Motion: **REP. JOHNSON MOVED HB 567 DO PASS.**

Motion/Vote: **REP. MEASURE** moved to amend HB 567 to strike out

4,5,6,7 on page 5 and all of subsection 8 and renumber subsection 9. Motion carried.

Motion/Vote: REP. JOHNSON MOVED HB 567 DO PASS AS AMENDED. Motion carried 19 to 1 with Rep. Brown voting no.

EXECUTIVE ACTION ON HB 421

Motion: REP. BROOKE MOVED HB 421 DO PASS.

Discussion: REP. MEASURE said this bill should have some legislation that addresses Justice of the Peace and City Courts.

Vote: Motion carried 18 to 2 with Rep's: Toole and Whalen voting no.

EXECUTIVE ACTION ON HB 559

Motion: REP. BROOKE MOVED HB 559 DO PASS.

Discussion: REP. MEASURE stated this bill addresses two areas. One is the area of change of presumption of the law for DUI to an inference. Presumption means you have to, as a defendant, overcome that presumption in order to overcome the state's case. That is already in the law and case law. Then the bill mentions airplanes and boats and some licensing while under the influence of drugs. Some of these drugs have residual effects that last for months. The second thing is you are forcing a person to do is take a blood test as opposed to the breathalizer. You are spending the county's money to do this and who knows what results you are going to get.

Motion: REP. MEASURE moved to amend HB 559 by totally deleting all the language having to do with drug testing in this bill. "So the bill only brings the DUI statues into compliance with what we presently have reviewed by the Supreme Court."

Discussion: REP. WHALEN stated he felt that the committee needs to realize the Supreme Court has already thrown the fifth amendment out the window when it comes to these types of statutes. With that in mind, he emphasized that the committee needs to keep this bill as narrow as possible.

REP. CLARK stated this would take away the ability of the state to determine if the person is actually under the influence of drugs.

REP. BROWN said that what the bill is trying to do is set up a new system for determining if someone is under the influence.

REP. CLARK said this amendment takes a tool away from the law enforcement to find out what drug they are on.

Vote: Motion carried 12 to 8. EXHIBIT 1

Motion: REP. WHALEN MOVED HB 559 DO PASS AS AMENDED.

Discussion: REP. MEASURE asked what does "in actual physical control" mean?

CHAIRMAN STRIZICH said that under case law, his understanding is that if you are in a car and possess keys to operate the car, you may be charged with a DUI if you are impaired.

Vote: Motion carried 15 to 5 with Rep's: Russell, Wyatt, Whalen, Clark and Brown voting no.

EXECUTIVE ACTION ON HB 788

Motion: REP. BROOKE MOVED HB 788 DO PASS.

Motion: REP. BROOKE moved to amend HB 788. EXHIBIT 2

Discussion: REP. BROOKE stated the first three amendments add the phrase, "using his professional judgement", to put into language an explanation of all or part of the following and those are the things laid out that would be part of the counseling.

REP. MESSMORE asked if there is a definition in the codes for the word "professional".

John MacMaster said he didn't know but he can find out.

REP. MESSMORE said in amendment one we are talking about "his professional judgment". We are not talking just about a physician, we are talking about a physician or a counselor and I object to the word professional being used. Some of those people are not professionals.

REP. RICE stated the purpose of the amendment would be to change the bill as drafted to make it the option of the counselor to give them that information.

REP. BROOKE asked REP. RICE why he didn't think it wouldn't still be part of the counselling? REP. RICE said as the bill came in all the things that are started on page 3 are mandatory items that must be given to a minor seeking an abortion. The physician or counselor shall give all these things. To amend it would put it at the option of the physician or counsellor.

REP. BROOKE said the bill still contains "shall" on page 2. She stated that this is where the professional judgement comes in.

REP. TOOLE stated he was thinking that Rep. Brooke is not intending to do what it may do. He felt that what the amendment ought to do is say that the counselor or physician must address all the following items in a way he or she deems appropriate.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 2-17-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. DAVE BROWN	✓		
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		
REP. BUDD GOULD			✓
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER	✓		
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	✓		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN	✓		
REP. DIANA WYATT	✓		
REP. BILL STRIZICH, CHAIRMAN	✓		

2-21-91
1mc

HOUSE STANDING COMMITTEE REPORT

February 20, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 559 (first reading copy -- white) do pass as amended .

Signed: _____
Bill Strizich, Chairman

And, that such amendments read:

1. Page 3, line 25.
Page 4, line 7.
Page 4, end of line 22 and beginning of line 23.
Page 5, line 8.
Page 5, end of line 16 and beginning of line 17
Page 7, lines 4 and 19.
Page 8, line 10.
Page 9, lines 16 and 18.
Page 24, line 9.
Page 26, lines 9 and 16.
Page 27, line 2.
Strike: "or tests"

2. Page 4, lines 14 through 16.
Strike: "A" on line 14 through end of line 16

3. Page 4, lines 3 and 4.
Page 7, lines 14 and 15.
Page 9, lines 2 and 3.
Page 9, lines 11 and 12.
Page 23, line 24.
Page 24, lines 12 and 13.
Page 25, line 20.
Page 27, line 5 and line 13.
Strike: ", drugs, or a combination of the two"

4. Page 26, line 11.
Strike: ","

5. Page 26, line 12.
Strike: "drugs, or a combination of the two"

29

EXHIBIT 1
DATE 2-17-91
HB 559

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 2-17-91 BILL NO. HB#559 NUMBER 1

MOTION: Rep. Measure motion to strike all lang. dealing with drug testing

PASSED

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	—	
REP. ARLENE BECKER	—	
REP. WILLIAM BOHARSKI		—
REP. DAVE BROWN	—	
REP. ROBERT CLARK		—
REP. PAULA DARKO	—	
REP. BUDD GOULD		—
REP. ROYAL JOHNSON		—
REP. VERNON KELLER		—
REP. THOMAS LEE		—
REP. BRUCE MEASURE	—	
REP. CHARLOTTE MESSMORE		—
REP. LINDA NELSON	—	
REP. JIM RICE		—
REP. ANGELA RUSSELL	—	
REP. JESSICA STICKNEY	—	
REP. HOWARD TOOLE	—	XXX
REP. TIM WHALEN	—	
REP. DIANA WYATT	—	
REP. BILL STRIZICH, CHAIRMAN	—	
TOTAL	12	8

CHAIRMAN--RICHARD PINSONEAULT
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: M,T,W,T,F TIME: 10:00 A.M.

SECRETARY-JOANN BIRD

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
HB0555	2/25	3/07		CONCUR		3/07
HOFFMAN, DAVID			REVISE CRIMINAL PROOF AND PRESUMPTIONS			
HB0559	2/27	3/25		CONCUR AS AMENDED		4/04
FAGG, RUSSELL			GENERALLY REVISE & CLARIFY DUI LAWS			
HB0567	2/25	3/20		CONCUR		3/20
FAGG, RUSSELL			REVISE ATTORNEY GENERAL DUTIES			
HB0571	2/27	3/25		CONCUR		3/25
RICE, JIM			REVISION TO MOTOR VEHICLE HABITUAL OFFENDER STATUTES			
HB0572	2/27	3/25		CONCUR		3/25
RICE, JIM			GENERALLY REVISED COMMERCIAL OPERATOR DUI STATUES & OTHER OFFENSES			
HB0573	2/27	3/25		CONCUR		3/25
RICE, JIM			CLARIFY THE MOTOR VEHICLE CODE DEFINITION OF "CONVICTION"			
HB0581	2/25	3/13		CONCUR		3/16
STRIZICH, BILL			ALLOW ALL LAW ENFORCEMENT AGENCIES TO USE CERTAIN RECORDS OF YOUTHS			
HB0596	2/25	3/26		CONCUR		4/01
O'KEEFE, MARK			PROHIBIT HOUSING DISCRIMINATION ON MARITAL STATUS			
HB0604	2/27	3/26		TABLED ON 04/01		
BROWN, JAN			ALLOW ADULTS TO OBTAIN INFORMATION DISCLOSING BIRTH OUT OF WEDLOCK			
HB0608	2/25	3/20		TABLED ON 03/23		
WHALEN, TIM			GIVE PSC QUASI-JUDICIAL POWER INCREASE FINE FOR COMMON CARRIER TO $500 A DAY			
HB0618	2/27	3/22		CONCUR AS AMENDED		3/22

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 25, 1991, at 10:05 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: none

HEARING ON HOUSE BILL 668

Presentation and Opening Statement by Sponsor:

Representative Paula Darko, District 2, said a similar version of HB 668 did not pass last session. She explained that the bill would allow suspension of a driver's license for a person under 18 years of age convicted of multiple offenses of possession of an intoxicating substance, and that currently a judge can only assess a $50 fine.

Representative Darko advised the Committee that HB 668 follows with the discipline used in teaching, i.e. logical, progressive consequences. She said the bill came through the House with a strong vote, and that suspension of a license is optional for justices of the peace. Representative Darko urged the Committee to support HB 668.

Proponents' Testimony:

Patricia Bradley, Montana Magistrates, read from a short statement in support in support of HB 668.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Towe asked if a license is suspended for 90 days or less for a first offense. Representative Darko replied that would be correct.

Closing by Sponsor:

Representative Darko advised the Committee that language was changed from "revoked" to "suspension" in order to have an official record of the suspension.

EXECUTIVE ACTION ON HOUSE BILL 668

Motion:

Senator Towe made a motion that HB 668 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Towe carried unanimously.

HEARING ON HOUSE BILL 559

Presentation and Opening Statement by Sponsor:

Representative Russell Fagg, District 89, said HB 559 was requested by the Department of Justice. He explained that the bill addresses DUI with regard to operation of planes and boats, as well as automobiles. Representative Fagg advised the Committee that an important part of the bill was stripped out in the House by Representative Measure, concerning testing for drugs by an arresting officer if he or she suspects drug use. He asked that this language be reinserted in the bill (Exhibit #1).

Representative Fagg stated that officers need to be able to test people for drugs, because they are able to arrest them for driving under the influence of drugs.

Proponents' Testimony:

Peter Funk, Office of the Attorney General, said the Department of Justice (DOJ), felt the language needed to be cleaned up, that DUI statutes needed to be consistent. He said another issue changes language from "presumptive" to "inference", and that the Department recognizes this is a Legislative decision. Mr. Funk stated it is a crime to drive under the influence of drugs, but tests are provided only for alcohol right now.

Mr. Funk advised the Committee that implied consent is in 64-108-402, MCA (Section 2 of the bill). He explained that testing is limited to two tests (page 4). Peter Funk proposed an amendment on page 7, line 17 (Exhibit #2). He said initial tests show only "metabolite", and not the actual presence of drugs because marijuana can remain in the blood for 30 days or more.

Mr. Funk stated he believes law enforcement needs some mechanism for developing the level of evidence. He explained that people cannot be convicted solely on the results of blood tests, and that no tests can occur under the implied consent statute until the arresting officer has made the decision to make an arrest (61-8-402, MCA).

Mr. Funk explained that the bill asks for the right to test a fairly small segment of drivers. He said "narcotic" on page 1 was changed to "dangerous" to mesh with the criminal system. Mr. Funk further stated that concentration of alcohol "in the blood" was changed to "in the person" on page 2, line 15 (62-8-407, MCA).

Mr. Funk further advised the Committee that the inference change is at the bottom of page 2, line 19 and the top of page 3, through line 6, concerning producing every element of offense beyond a reasonable doubt. He told the Committee that Leverett, (October or November 1990), was a negligent homicide prosecution, based on this presumption. Mr. Funk explained that DOJ now believes this is a dead issue. He urged the Committee to make this change in presumption language, and said that statute is unconstitutional right now.

Mr. Funk continued, and said the bottom of page 5 and the top of page 6 clarify that non-residents involved in implied consent tests would be handled the same as for a Montana resident. He stated that page 9, line 6 currently says that persons placed under arrest for DUI have the right to their own test. Mr. Funk recommended changing the language from "person tested" to "person under arrest".

In conclusion, Mr. Funk asked the Committee to strike Section 10, the implied consent provision for motor vehicles, as this is being done through HB 572.

John Connor, Montana County Attorneys, and County Prosecutor Services, Department of Justice, advised the Committee that he works with county prosecutors in serving their particular interests in changing language in statute. He said prosecutors like to look to the statutes, and that failure to change "presumptive" to "inference" would be devastating to validity, as it is not constitutional as it now stands.

Phil Lively, Director, Breath Alcohol Program, Division of Forensic Science, DOJ, Missoula, said he supports amending the bill concerning drug testing. He explained that officer training for alcohol has been expanded from 6 hours to 32 hours over the past few years. He said every arrest would not be tested for drugs, and that drugs testing is a very difficult area to develop evidence for (Exhibit #3).

Mr. Lively told the Committee that frequently a law enforcement office will see the need for further testing for performance, but is prevented from doing so because drug testing is not allowed. He said paraphernalia doesn't necessarily lead to a firm correlation of drug use.

Phil Lively further advised the Committee that Jim Hutchison, Senior Toxicologist for the Crime Lab, found that 26 percent of alcohol sample also showed drugs, and 33 percent of this group showed more than one drug "on board". He said the Lab pulled 100 random blood samples for alcohol and found 30 percent of them to be positive for marijuana. He said this indicates that people drive fairly frequently under the influence of drugs.

Mr. Lively further stated that alcohol is unique in the ability to establish a blood alcohol level to impairment, but this is not possible with other drugs. He said he got a verbal agreement from the National Highway Safety Council to have drug recognition and evaluation training, and that Montana has been turned down twice before for this training.

In conclusion, Mr. Lively stated that drug recognition and evaluation training can help officers to immediately make identifications and then help toxicologists. He urged the Committee to consider drug and multiple testing.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Pinsoneault asked what happens if an arrestee says he wants his own test, and how a law enforcement office would handle

this. John Connor replied that prosecution must look at the overall picture to get the job done, and said the arrestee is entitled to refuse testing or get his own test. He commented that it could present some problems. Mr. Connor said that if the test is intended to be used in a trial, then prosecutors are entitled to testing information. He explained that, otherwise, the state is not entitled to get the results of a test.

Senator Pinsoneault asked what happens if the arrestee agrees to a test. John Connor replied that if it is exculpatory, the prosecutor would want this information.

Senator Towe asked about language on page 4, concerning probable cause for drugs. Peter Funk replied that, in his opinion, once an officer determines there is probable cause to place someone under arrest, that officer has the right to test for blood alcohol level and drugs.

Senator Towe asked if this would allow fairly routine drug testing. Peter Funk replied that, in terms of a legal challenge, he had no problems with the bill as it is drafted now. He further stated that he had no problem with inserting probably cause language. Peter Funk advised Senator Towe that existing language says "one test".

Senator Towe asked what a drug test identifies. Peter Funk replied that the first test makes identification, and the second test is confirmatory. Mr. Lively further advised Senator Towe that if a blood sample is taken, the lab can do general screening and quantitate to the level of a drug on the second test. He explained that it is more difficult if the lab is looking for alcohol, as they would need more blood. Mr. Lively commented that it would be best to do a breathalyzer first.

Senator Towe asked why blood tests would be used rather than urine tests. Mr. Lively replied that if it is psychoactive, it is in the blood, but this is not so for urine. He explained that marijuana would not be in blood one week after use.

Senator Towe asked what happens if a person is only given a citation and is not arrested. Peter Funk replied that this would not be a problem, but all DUIs are now placed under arrest.

Senator Svrcek asked about amendment language, "other competent evidence" on page 3, lines 7-10. Peter Funk replied that is in existing DUI statute. He said this means to defer to the judge handling this matter, and is saying the prosecutor must have evidence beyond the drug test that the judge is willing to admit, such as a field sobriety test.

Chairman Pinsoneault advised Senator Svrcek that there is always a video for "other competent evidence".

Senator Svrcek asked about the competency of testing labs, and if they would be NIDA-certified. Jim Hutchison, replied that NIDA-certified labs were established as protection for pre-employment screening, as these labs may employ people who may not have proper training or education. He said the Forensic lab deals with criminal information, and requires a minimum of a B.S. or an M.S., and that employees are trained, forensically, by colleagues. Mr. Hutchison stated there is no specific certification, but the lab is certified by the Association of Medical Examiners and the Board of Toxicologists. He commented the lab would pass a NIDA inspection.

Senator Svrcek asked if an officer has sanction to search a vehicle if he or she suspects the use of drugs. Mr. Lively replied he is not familiar with search and seizure, but officers do ask to search vehicles, are many times given permission, and do find drugs. He explained that open view is also available to law enforcement officers.

Senator Svrcek asked about Mr. Lively's "multiple" testing statement. Mr. Lively replied that science may mean 100 analyses of a sample and law may mean a sample. He commented that maybe language needs to be changed to "a sample or samples".

Senator Svrcek asked if these blood samples become the property of the state, if they are labeled by person, and if the defendants are aware of random testing on those samples. Mr. Lively replied this was done as in investigative process without thought of prosecution, and was done randomly. He said there are no names or numbers on the samples.

Peter Funk commented that if law enforcement can't develop a procedure to eliminate multiple testing without harassment, they shouldn't have the right to test.

Closing by Sponsor:

Representative Fagg asked the Committee to remember that the person doesn't have to take the tests, but would lose his or her drivers' license. He asked the Committee to pass the bill with the proposed amendment.

HEARING ON HOUSE BILL 572

Presentation and Opening Statement by Sponsor:

Representative Jim Rice, District 43, said he was presenting the bill with some reluctance, as it is rather oppressive-looking, but the state needs to comply with federal statutes or it will lose between 5 and 10 percent of federal dollars. He explained that HB 572 raises the penalty for a second-offense commercial DUI from 10 years to life suspension.

Senator Svrcek asked if there is a difference between maintaining confidential records and expunging them. Peter Funk replied that there is a huge difference. He explained that the 1989 Session completely eliminated the language of expungement, but the Department feels the records should exist somewhere if a negligent homicide or negligent vehicular assault happens a second time. He said the end result is this information is labeled as confidential criminal justice information.

Chairman Pinsoneault said he once called at least six different insurance carriers to check their policy on careless and reckless driving citations. He advised the Committee that he found the companies use their own discretion, and that this varies.

Closing by Sponsor:

Representative Rice told the Committee that the 1989 Legislature passes legislation to record deferred imposition of sentence for all but traffic fines. He said the House found out the Silverbow County can provide deferred sentences for DUI.

DISCUSSION ON HOUSE BILL 559

Senator Towe asked for time to prepare amendments concerning the reinstatement of drugs in HB 559.

Senator Halligan said he would oppose adding probably cause.

Senator Towe stated he had four amendments relating to drugs.

Senator Pinsoneault stated the Committee would wait for the amendments.

EXECUTIVE ACTION ON HOUSE BILL 572

Motion:

Senator Harp made a motion that HB 572 BE CONCURRED IN.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Harp carried unanimously. Senator Pinsoneault said he would carry HB 572.

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 25 Mar 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty			
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

25 Mar 91 2-21-91
HB 559

HOUSE STANDING COMMITTEE REPORT

February 20, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 559 (first reading copy -- white) do pass as amended.

Signed: Bill Strizich, Chairman

And, that such amendments read:

1. Page 3, line 25.
Page 4, line 7.
Page 4, end of line 22 and beginning of line 23.
Page 5, line 8.
Page 5, end of line 16 and beginning of line 17
Page 7, lines 4 and 19.
Page 8, line 10.
Page 9, lines 16 and 18.
Page 24, line 9.
Page 26, lines 9 and 16.
Page 27, line 2.
~~Strike:~~ "or tests"
Insert

2. Page 4, lines 14 through 16.
~~Strike:~~ "A" on line 14 through end of line 16
Insert

3. Page 4, lines 3 and 4.
Page 7, lines 14 and 15.
Page 9, lines 2 and 3.
Page 9, lines 11 and 12.
Page 23, line 24.
Page 24, lines 12 and 13.
Page 25, line 20.
Page 27, line 5 and line 13.
~~Strike~~: ", drugs, or a combination of the two"
Insert

4. Page 26, line 11.
~~Strike:~~ ","
Insert

5. Page 26, line 12.
~~Strike:~~ "drugs, or a combination of the two"
Insert

25 Mar 91
HB 559

Amendment to House Bill No. 559
Third Reading Copy (Blue)

Prepared by Peter Funk
Department of Justice
March 25, 1991

1. Page 7, line 17.
Following: "admissible"
Strike: ";"
Insert: ". A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in his person unless some other competent evidence exists tending to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state;

Ex #3
25 Mar 91
HB 559

STATE OF MONTANA

DEPARTMENT OF JUSTICE

FORENSIC SCIENCE DIVISION

Marc Racicot
Attorney General

Broadway Building
554 West Broadway - 6th Floor
Missoula, MT 59802

Mister Chairman and Members of the Senate Judiciary Committee,

My name is Phillip I. Lively, I am employed by the Forensic Science Division, Department of Justice, where I am the Director of the Breath Analysis Program.

The following testimony is in regards to the changes and amendments in House Bill 559, concerning Title 61 chapter 8 part 4, as presented by the House Judiciary Committee

Tel. (406) 728-4970

THE PROPOSED SECTIONS OF THE BILL CONCERNING MULTIPLE TESTING AND THE ADDITION OF DRUGS, OR ANY COMBINATION OF THE TWO WERE PRESENTED AS FOLLOWS:

THE PROPOSED WORDING IS UNDERLINED

61-8-402 (THE IMPLIED CONSENT SECTION)

BLOOD, BREATH, OR URINE TESTS. (1) ANY PERSON WHO OPERATES OR IS IN ACTUAL PHYSICAL CONTROL OF A VEHICLE UPON THE WAYS OF THE STATE OPEN TO THE PUBLIC SHALL BE DEEMED TO HAVE GIVEN CONSENT, SUBJECT TO THE PROVISIONS OF 61-8-401, TO A TEST <u>OR TESTS</u> OF HIS BLOOD BREATH, OR URINE FOR THE PURPOSES OF DETERMINING <u>ANY MEASURED AMOUNT OR PRESENCE OF ALCOHOL, DRUGS, OR ANY COMBINATION OF THE TWO</u> IF ARRESTED BY A PEACE OFFICER FOR DRIVING OR FOR BEING IN ACTUAL PHYSICAL CONTROL OF A VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, <u>DRUGS OR ANY COMBINATION OF THE TWO</u>. THE TEST <u>OR TESTS</u> SHALL BE ADMINISTERED AT THE DIRECTION OF A POLICE OFFICER HAVING REASONABLE GROUNDS TO BELIEVE THE PERSON TO HAVE BEEN DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A VEHICLE UPON THE WAYS OF THE STATE OPEN TO THE PUBLIC WHILE UNDER THE INFLUENCE OF ALCOHOL, <u>DRUGS, OR ANY COMBINATION OF THE TWO</u>. THE ARRESTING OFFICER MAY DESIGNATE WHICH TEST OR TESTS SHALL BE ADMINISTERED. <u>A PERSON MAY NOT BE GIVEN MORE THAN TWO TESTS UNLESS THE PERSON CHOOSES TO HAVE AN ADDITIONAL TEST AS PROVIDED IN 61-8-405 (2)</u>

61-8-404 (EVIDENCE ADMISSIBILITY)

(A) EVIDENCE OF <u>ANY MEASURED AMOUNT OR DETECTED PRESENCE OF ALCOHOL, DRUGS, OR ANY COMBINATION OF THE TWO</u> IN THE PERSON AT THE TIME OF THE ACT ALLEGED, AS SHOWN BY <u>AN ANALYSIS</u> OF HIS BLOOD, BREATH OR URINE IS ADMISSIBLE...

<u>AS TO THE NEED FOR TESTING INDIVIDUALS FOR THE PRESENCE OF DRUGS IN A DRIVING UNDER THE INFLUENCE CASE:</u>

THE INCREASING ROLE OF DRUGS, ILLICIT OR OTHERWISE, IN OUR EVERY DAY LIFE IS A CONCERN THAT I AM SURE ALL OF US HERE SHARE. EVERY DAY THE NEWS MEDIA REPORTS ON THE EVER ESCALATING USE AND ABUSE OF DRUGS AND THEIR CONSEQUENCES. THIS CONDITION EXITS THROUGHOUT THE COUNTRY AND UNFORTUNATELY MONTANA IS NOT IMMUNE.

WHEN ONE CONTEMPLATES THE "DRUG PROBLEM" ONE SPECIFIC FACET THAT MUST BE ADDRESSED IS THE ROLE OF DRUGS AND THE SAFE OPERATION OF A MOTOR VEHICLE.

THE ROLE OF ALCOHOL IN MOTOR VEHICLE OPERATION AND FATAL ACCIDENTS IS WELL ESTABLISHED, HOWEVER THE ROLE OF DRUGS IS JUST NOW BECOMING APPARENT.

IN SUPPORT OF MODIFYING THE CURRENT IMPLIED CONSENT PROVISION (61-8-402) OF THE DRIVING UNDER THE INFLUENCE LAW, THE FOLLOWING STUDIES AUGMENTED BY DATA COLLECTED BY THE FORENSIC SCIENCE DIVISION IS OFFERED.

IN 1983 THE INSURANCE INSTITUTE FOR HIGHWAY SAFETY FUNDED A STUDY CONCERNING ALCOHOL AND DRUG PRESENCE IN FATALLY INJURED MALE DRIVERS. THE STUDY WAS BASED ON DATA COLLECTED FROM LOS ANGLES COUNTY, ORANGE COUNTY, SACRAMENTO COUNTY, AND SAN DIEGO COUNTY, CALIFORNIA. THE STUDY CONCERNED ITSELF WITH MALES BETWEEN THE AGES OF 15 TO 34 YEARS OF AGE WHO WERE KILLED IN AUTOMOBILE ACCIDENTS. THE NUMBER OF INDIVIDUALS WHO MET THE STUDY CRITERIA WAS 440. THEIR FINDINGS ARE SUMMARIZED BELOW:

TEST POPULATION = 440
SAMPLE SELECTED FOR ANALYSIS WAS BLOOD
SAMPLES WHERE ANALYZED FOR ALCOHOL, MARIJUANA, COCAINE, DIAZEPAM (VALIUM), PHENCYCLIDINE (PCP), AND METHAMPHETAMINE (SPEED).

OF THE 440 INDIVIDUALS 308 OR 81% WERE POSITIVE FOR ALCOHOL AND OR DRUGS

OF THE 81%, 70% WERE POSITIVE FOR ALCOHOL
43% HAD TWO OR MORE DRUGS ON BOARD
37% WERE POSITIVE FOR MARIJUANA
11% WERE POSITIVE FOR COCAINE
4% WERE POSITIVE FOR DIAZEPAM
4% WERE POSITIVE FOR PHENCYCLIDINE
3% WERE POSITIVE FOR METHAMPHETAMINE

EXCEPT FOR ALCOHOL, DRUGS WERE INFREQUENTLY FOUND ALONE IN THE SYSTEM, AND WERE TYPICALLY IN COMBINATION WITH HIGH ALCOHOL CONCENTRATIONS.

OTHER STUDIES HAVE DEMONSTRATED SIMILAR FINDINGS.

IN ONTARIO, CANADA 26% OF NON-FATAL INJURED DRIVERS TESTED POSITIVE FOR DRUGS OTHER THAN ALCOHOL.

IN ROCHESTER, NEW YORK 22% OF NON-FATAL INJURED DRIVERS PERCENT TESTED POSITIVE FOR DRUGS OTHER THAN ALCOHOL.

IN SAN BERNARDINO COUNTY 21% OF FATAL INJURED DRIVERS TESTED POSITIVE FOR DRUGS OTHER THAN ALCOHOL.

OF SPECIAL NOTE A STUDY CONDUCTED IN SWEDEN IDENTIFIED THAT 21% OF INDIVIDUALS ARRESTED (NO ACCIDENT OR INJURY INVOLVED) FOR SUSPICION OF DRIVING UNDER THE INFLUENCE OF ALCOHOL WERE DRUGGED IMPAIRED.

TO BRING THESE FIGURES INTO FOCUS FOR MONTANA THE FORENSIC SCIENCE DIVISION, TOXICOLOGY SECTION PROVIDES THE FOLLOWING DATA.

IN 1990 585 SAMPLES WERE SUBMITTED AS MOTOR VEHICLE ACCIDENTS (MVA) AND DRIVING UNDER THE INFLUENCE OF DRUGS (DUID)

DRUGS WERE FOUND TO BE PRESENT IN 26% OF THE SAMPLES

THE BREAKDOWN FOR THE DRUGS OF MAJOR CONCERN IS AS FOLLOWS:

LOCAL ANAESTHETIC (LIDOCAINE)	18%
NARCOTICS (CODEINE)	11%
TRANQUILIZERS (VALIUM)	21%
SEDATIVES/HYPNOTIC	3%
STIMULANTS (COCAINE) (AMPHETAMINE)	7%
ANTICONVULSANT	9%
ANTIDEPRESSANTS (MOOD ELEVATORS)	5%
BARBITURATES	2%

OF THE CASES DETERMINED POSITIVE, 31% HAD TWO OR MORE DRUGS IN SYSTEM.

IT WAS NOT UNTIL JUST RECENTLY, THAT THE FORENSIC SCIENCE DIVISION HAD THE CAPABILITY TO SCREEN FOR MARIJUANA IN BLOOD. IN AN EFFORT TO ESTIMATE THE USE LEVEL OF MARIJUANA IN THIS CATEGORY, THE TOXICOLOGY DIVISION SCREENED 100 RANDOMLY SELECTED SAMPLES AND FOUND 30% TO BE POSITIVE FOR MARIJUANA.

AS TO THE CREATION OF MULTIPLE TESTS UNDER 61-8-402; THE IMPLIED CONSENT SECTION:

THE MAJORITY OF DRIVERS STOPPED FOR THE CLASSIC SYMPTOMS OF DRIVING UNDER THE INFLUENCE WILL BE TESTED FOR ALCOHOL. THE FOCAL POINT OF THE POLICE OFFICER IN THE PAST HAS ALWAYS BEEN ALCOHOL. THIS FOCUS IS NOW CHANGING AND TRAINING FOR LAW ENFORCEMENT PERSONNEL IS NOW BRANCHING INTO THE AREA OF DRUG AWARENESS AND DETECTION. UNDER THE CURRENT IMPLIED CONSENT PROVISION TWO ELEMENTS SEVERELY RESTRICT THE ABILITY TO CONDUCT AN ANALYSIS FOR THE PRESENCE OF DRUGS.

NUMBER ONE. THE CURRENT IMPLIED CONSENT PROVISION STATES THAT AN INDIVIDUAL MUST SUBMIT A SAMPLE OF BREATH, BLOOD, OR URINE "TO DETERMINE THE ALCOHOL CONTENT OF THE BLOOD" . THIS STATEMENT THEREFORE PROHIBITS THE COLLECTION OF A SAMPLE FOR DETERMINING THE PRESENCE OF A DRUG.

NUMBER TWO. THE CURRENT IMPLIED CONSENT PROVISION ALSO REFERS TO "A TEST". THIS HAS ALWAYS BEEN A POINT OF CONFUSION BETWEEN SCIENCE AND LAW. "A TEST" IN SCIENCE MAY MEAN A NUMBER OF INDIVIDUAL ANALYSES PERFORMED ON A NUMBER OF SAMPLES TO REACH A CONCLUSION. HOWEVER, IN LAW "A TEST" IS NORMALLY INDICATIVE OF A SINGLE ANALYSIS ON A SINGLE SAMPLE, HENCE THE INABILITY TO TEST FOR BOTH ALCOHOL AND DRUGS UTILIZING SEPARATE SAMPLES . THIS CREATES A MAJOR PROBLEM IN DEALING WITH DRIVERS IN TODAY'S DRUG EFFECTED SOCIETY.

THE MAJORITY OF INDIVIDUALS ARRESTED FOR DUI WILL BE UNDER THE INFLUENCE OF ALCOHOL AND WILL BE OFFERED A BREATH ANALYSIS TO DETERMINE THEIR ALCOHOL CONCENTRATION. HOWEVER, THOSE INDIVIDUALS USING DRUGS ALSO KNOW THIS, AND EMPLOY THE TECHNIQUE OF GULPING DOWN ONE OR TWO DRINKS RIGHT BEFORE THEY DRIVE. WHEN A POLICE OFFICER STOPS THIS INDIVIDUAL, THE FIRST OBSERVATION IS THAT THERE IS A SMELL OF AN ALCOHOLIC BEVERAGE PRESENT AND THAT POLICE OFFICER IS NOW IN A MIND SET OF ALCOHOL. PERFORMANCE TESTS ARE CONDUCTED, THE DECISION TO ARREST IS REACHED, THE INDIVIDUAL IS TRANSPORTED TO THE STATION WHERE A BREATH ANALYSIS IS PERFORMED AND THE RESULT IS AN ALCOHOL CONCENTRATION WHICH IS INCONSISTENT WITH THE PERSONS ACTIONS.

THE OBSERVED IMPAIRMENT IS A RESULT OF DRUGS AND NOT ALCOHOL. AT THIS POINT THE OFFICER IS STOPPED. "A TEST" HAS BEEN PERFORMED AND THE INDIVIDUAL CANNOT BE TESTED ANY FURTHER EVEN THOUGH IT IS NOW OBVIOUS THAT THE IMPAIRMENT IS A RESULT OF A SUBSTANCE OTHER THAN ALCOHOL.

THE ADDITION OF MULTIPLE TESTING IN THE IMPLIED CONSENT SECTION ALLOWS THE LAW ENFORCEMENT OFFICER TO HANDLE SITUATIONS SUCH AS THE VERY COMMON ONE DESCRIBED. IF ONE IS REQUIRING PROBABLE CAUSE FOR THE PRESENCE OF DRUGS THERE IS NONE BETTER THAN AN ALCOHOL CONCENTRATION INCONSISTENT WITH THE PERSONS OBSERVABLE ACTIONS AND ABILITIES.

IT SHOULD BE POINTED OUT THAT THE SECOND TEST IS PRIMARILY FOR DRUGS, NOT TO BE ABLE TO CONDUCT A SECOND BREATH OR BLOOD ALCOHOL ANALYSIS. FURTHER, IF A COMPLETED BREATH ANALYSIS HAS BEEN CONDUCTED, THE FORENSIC SCIENCE DIVISION WILL NOT RE-EVALUATE THE SUBMITTED SECOND SAMPLE FOR THE ALCOHOL CONCENTRATION, UNLESS EXTENUATING CIRCUMSTANCES ARE PRESENT AND DOCUMENTED.

THE PRIMARY SAMPLES FOR THE ANALYSIS OF ALCOHOL AND DRUGS ARE; BREATH OR BLOOD FOR THE ALCOHOL AND BLOOD FOR THE PRESENCE OF DRUGS. THERE IS ALWAYS CONCERN AS THE TO VALIDITY OF A URINE SAMPLE IN A DUI CASE SINCE THE SUBSTANCES DETECTED IN THE URINE ARE NOT THE ACTUAL DRUG OR DRUGS BUT A METABOLITE OF THE DRUG OR DRUGS. IN FACT IF URINE WERE TO BE STRICKEN FROM THE IMPLIED CONSENT SECTION THE FORENSIC SCIENCE DIVISION WOULD NOT OBJECT.

THE DELETION OF THE ABILITY AND AUTHORITY TO OBTAIN AND TEST MULTIPLE BIOLOGICAL SAMPLES HAVE A MULTI-PRONGED EFFECT.

1. THERE CANNOT BE ANY VIABLE PROSECUTION OF A SUSPECT FOR DRIVING UNDER THE INFLUENCE OF DRUGS. NOT ONLY WAS THE REFERENCES TO DRUGS ELIMINATED FROM THE IMPLIED CONSENT PORTION (61-8-402) BUT ALL REFERENCES TO DRUGS IN THE EVIDENCE ADMISSIBILITY SECTION (61-8-404) WERE REMOVED AS WELL.

2. SINCE THE DIVISION OF FORENSIC SCIENCE REQUESTED SPECIFIC AUTHORITY TO ANALYZE OBTAINED BIOLOGICAL SAMPLES FOR THE PRESENCE OF DRUGS AND WAS DENIED THAT AUTHORITY, IT IS QUITE POSSIBLE THAT WE MAY NO LONGER BE ABLE TO PROVIDE THAT SERVICE FOR THE LAW ENFORCEMENT AGENCIES ON A DRIVING UNDER THE INFLUENCE ARREST WHERE DRUGS ARE SUSPECT.

3. THE ABILITY FOR A LAW ENFORCEMENT OFFICER TO CONDUCT TESTS IN AN EFFORT TO DETECT AN INDIVIDUAL DRIVING UNDER THE INFLUENCE OF DRUGS IS ELIMINATED. THE NATIONAL HIGHWAY TRAFFIC SAFETY DIVISION PROVIDES TRAINING FOR LAW ENFORCEMENT OFFICERS THROUGH A PROGRAM KNOWN AS THE "DRUG RECOGNITION AND EVALUATION TRAINING". THIS PROGRAM HAS PROVEN TO BE EXTREMELY SUCCESSFUL IN THOSE AREAS WHICH HAVE RECEIVED AND IMPLEMENTED THE TRAINING. THOSE TRAINED OFFICERS CAN NOT ONLY DETECT THE PRESENCE OF A DRUG BUT CAN ALSO CORRELATE THE OBSERVABLE IMPAIRMENT TO A GROUP OR GROUPS OF DRUGS. I RECENTLY RECEIVED VERBAL APPROVAL FROM ONE OF THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION REPRESENTATIVES, WASHINGTON D.C. THAT THEY WOULD CONDUCT SUCH A TRAINING FOR OUR LAW ENFORCEMENT OFFICERS, HOWEVER, THE MAJOR REQUIREMENT FOR RECEIVING THE TRAINING IS THAT THE LAW ALLOWS FOR MULTIPLE TESTING. WE NOW WILL NOT QUALIFY FOR THIS IMPORTANT AND PROGRESSIVE ADDITION TO THE LAW ENFORCEMENT ARSENAL AGAINST DRUGS. THIS TOOL IS NOT ONLY BENEFICIAL TO THE ENFORCEMENT OF THE DUI PROGRAM BUT IT IS ALSO VERY HELPFUL IN IDENTIFYING DRUG USAGE IN OTHER SITUATIONS WERE DRUGS USE IS SUSPECTED.

FROM COMMENTS GATHERED CONCERNING THE HOUSE JUDICIARY ACTION IT APPEARS THAT THEIR PRIMARY CONCERN WAS WHETHER A PARTICULAR LEVEL OF A DRUG ALSO INDICATED IMPAIRMENT OF AN INDIVIDUAL.

HISTORICALLY WE HAVE ALWAYS RELATED IMPAIRMENT, OR MORE CORRECTLY BEING UNDER THE INFLUENCE, TO THE ALCOHOL CONCENTRATION. THE .10% ALCOHOL CONCENTRATION HAS BEEN USED AS THE GUIDELINE FOR THIS ASSESSMENT FOR A NUMBER OF YEARS. THE FACT IS THAT WITH ALCOHOL WE CAN MAKE A STATEMENT SUCH AS "IF AN INDIVIDUAL HAS AN ALCOHOL CONCENTRATION OF .10% OR HIGHER THAT INDIVIDUAL'S ABILITY TO OPERATE A VEHICLE SAFELY HAS BEEN DIMINISHED". THIS STATEMENT IS SCIENTIFICALLY CORRECT (IN FACT SCIENTIFICALLY CONDUCTED TESTING HAS ESTABLISHED BEYOND A DOUBT THAT THE LEVEL SHOULD IN FACT BE .08%) HOWEVER, THE SAME STATEMENT DOES NOT HOLD TRUE FOR OTHER DRUGS.

TO ILLUSTRATE THIS POINT, AN EXCERPT FROM A LETTER PREPARED BY JIM HUTCHINSON, CHIEF TOXICOLOGIST FOR THE FORENSIC SCIENCE DIVISION IS INCLUDED:

> JUST RECENTLY A COLLEAGUE AND I RETURNED FROM THE 43RD ANNUAL CONFERENCE OF THE AMERICAN ACADEMY OF FORENSIC SCIENCE. THIS ANNUAL MEETING IS A GATHERING OF THE WORLD'S LEADING AUTHORITIES IN THE AREA OF CRIMINALISTIC, JURISPRUDENCE, PATHOLOGY, BIOLOGY, TOXICOLOGY, PSYCHIATRY, ETC. THE PURPOSE OF THE MEETING IS THE EXCHANGE OF ANALYTICAL IDEAS, INFORMATION FOUND THROUGH RESEARCH, EXCHANGE OF CONCEPTS WITH PEERS AND COLLEAGUES AND THEREBY FURTHER THE DISCIPLINE OF FORENSIC SCIENCE.
>
> WE WERE FORTUNATE TO ATTEND AN EIGHT HOUR WORKSHOP ENTITLED "THE EFFECT OF DRUGS ON HUMAN PERFORMANCE: DRUGS AND DRIVING, DRUGS IN THE WORK PLACE. THE WORKSHOP WAS SPONSORED BY THE U.S. DEPARTMENT OF TRANSPORTATION AND THE NATIONAL HIGHWAY SAFETY ADMINISTRATION.